

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

02/27/2002

CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

LC 2001-000015

FILED: _____

STATE OF ARIZONA

CARRIE M COLE

v.

FAITH ROBIN BUCHIN

LAURIE A HERMAN

REMAND DESK CR-CCC
SCOTTSDALE CITY COURT

MINUTE ENTRY

SCOTTSDALE CITY COURT

Cit. No. #1447086

Charge: 1) FAILURE TO OBEY POLICE OFFICER

DOB: 10/17/54

DOC: 11/27/99

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This matter has been under advisement since the time of oral argument on January 28, 2002. This Court has considered and reviewed the record of the proceedings from the Scottsdale City

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Court, exhibits made of record, the arguments and Memoranda submitted by counsel.

Appellant, Faith Robin Buchin, was charged by complaint with violating Scottsdale City Ordinance Section 19-13, Failure to Obey Police Officer, a class 1 misdemeanor. The case proceeded to a bench trial on August 28, 2000 before the Honorable Joseph Olcavage of the Scottsdale City Court. In a written order dated September 18, 2000, Judge Olcavage found Appellant guilty and scheduled sentencing. Appellant was sentenced December 8, 2000 to pay a fine of \$187.00, including surcharges. Appellant filed a timely Notice of Appeal in this case.

Appellant has challenged the constitutionality of Scottsdale City's Code Section 19-13. Appellee has responded that Appellant has waived the issue by failing to raise it before the trial court. However, it appears from the trial court's ruling of September 18, 2000 and the arguments of counsel at trial that vagueness and overbreadth of the Scottsdale City Code Section were argued, at least tangentially. This Court will address the merits of Appellant's claims.

1. Standard of Review

Appellant raises a number of issues of constitutional dimension and statutory construction. In matters of statutory interpretation, the standard of review is *de novo*.¹ However, the appellate court does not reweigh evidence.² Instead, the evidence is reviewed in a light most favorable to affirming the

¹ In re: Kyle M., _____ Ariz. _____ 27 P.3d 804, 805 (App. 2001). See also, State v. Jensen, 193 Ariz. 105, 970 P.2d 937 (App. 1998).

² Id.

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lower court's ruling.³ Appellate courts must also review the constitutionality of a statute *de novo*.⁴

2. Vagueness of Ordinance

There is a strong presumption in Arizona that questioned statutes and ordinances are presumed to be constitutional, and the party asserting its unconstitutionality has a burden of clearly demonstrating the unconstitutionality.⁵ Whenever possible, a review court should construe an ordinance so as to avoid rendering it unconstitutional and resolve any doubts in favor of constitutionality.⁶ A statute is unconstitutionally vague if it fails to give persons of average intelligence reasonable notice of what behavior is prohibited, or if it is drafted in such a manner that permits arbitrary and discriminatory enforcement.⁷ A statute or ordinance may be impermissibly vague because it fails to establish standards for the police and public that are sufficient to guard against the arbitrary deprivation of liberty interests.⁸ Due process does not require that a statute or ordinance be drafted with absolute precision.⁹ Whenever the language of a legislative enactment is unclear, the courts must strive to give it a sensible

³ 27 P.3d at 805; State v. Fulminate, 193 Ariz. 485, 492-3, 975 P.2d 75, 82-83 (1999).

⁴ McGovern v. McGovern, No. D-125189, 2001 WL 1198983, at 2 (Ariz. App. Div. 2 Oct. 11, 2001); Ramirez v. Health Partners of Southern Arizona, 193 Ariz. 325 330-31, 972 P.2d 658, 663-64 (App. 1998).

⁵ State v. Lefevre, 193 Ariz. 385, 389, 972 P.2d 1021, 1025 (App. 1998); Larsen v. Nissan Motor Corporation in the United States, 194 Ariz. 142, 978 P.2d 119 (App. 1998).

⁶ Id.

⁷ State v. Lefevre, supra; State v. Steiger, 162 Ariz. 138, 781 P.2d 616 (App. 1989).

⁸ Recreational Developments of Phoenix, Incorporated v. City of Phoenix, 83 F.Supp.2d 1072, 1087 (D.Ariz. 1999), citing City of Chicago v. Morales, 527 U.S. 41, 119 S.Ct 1849, 144 L.Ed.2d 67 (1999).

⁹ State v. Lefevre, supra; State v. Takacs, 169 Ariz. 392, 819 P.2d 978 (App. 1991), citing Fuenning v. Superior Court, 139 Ariz. 590, 680 P.2d 121 (1983).

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construction and, if possible, uphold the constitutionality of that provision.¹⁰

Scottsdale City Code Section 19-13 provides:

No person shall refuse to obey a peace officer engaged in the discharge of his duty, or any other person authorized to aid in the quelling, of a riot, route or affray.

The trial court explains the Scottsdale City Ordinance as follows:

The plain meaning in the first part of that code indicates that an individual shall obey a police officer engaged in the discharge of his duties. The second part of that code section refers to the authority of an individual who is not a police officer, when attempting to get obedience from people in the area when engaged in attempting to quell a riot, route or affray. Clearly in this case the officer was engaged in the discharge of his duties as he was a backup officer where the driver of the vehicle was about to be cited. Thus, the officer was authorized to tell Mrs. Buchin to get back in her vehicle while the investigation was proceeding.¹¹

The specific language used within the Scottsdale City Ordinance make it unlikely that an innocent person would engage in the conduct prohibited by the ordinance inadvertently. The specific language used clearly gives persons of average intelligence reasonable notice of behavior which is prohibited: The failure to obey a police officer, after a specific

¹⁰ State v. Fuenning, supra; see Maricopa County Juvenile Action No. JT9065297, 181 Ariz. 69, 887 P.2d 599 (App. 1994), citing State v. Wagstaff, 164 Ariz. 485, 794 P.2d 118 (1990).

¹¹ Order of September 18, 2000 at pages 3-4.

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instruction, direction or order is given by the officer. Additionally, it does not appear that the ordinance was drafted in such a manner that would permit an arbitrary or discriminatory enforcement of the ordinance.

This Court finds that Scottsdale City Code Section 19-13 is not vague.

3. Overbreadth of Ordinance

Appellant's claim that the Scottsdale City Ordinance is unconstitutional because it is unconstitutionally overbroad. An overbroad statute or ordinance is a law that criminalizes conduct which is lawful and cannot be constitutionally made unlawful.¹² As with her vagueness claim, Appellant claims that the ordinance is overbroad because it can apply to conduct entitled to protection by the First Amendment to the United States Constitution. However, a person to whom a statute or ordinance may constitutionally be applied, does not have standing to challenge that statute or ordinance simply because it could be applied unconstitutionally in other hypothetical cases.¹³ The only exception to this standing requirement is where a law "substantially abridges the First Amendment rights of other parties not before the court."¹⁴

Appellant's arguments that her passive "failure to obey" the officer could criminalize lawful conduct must fail for the reason Appellant did more than simply ignore the officer. In its findings of fact the trial court found that Appellant refused to obey the officer's order:

In this particular case, criminal activity clearly occurring. The officer commanded the Defendant on at three or four occasions to return to her car. The officer was entitled to

¹² State v. Watson, 198 Ariz. 48, 6 P.3d 752 (App. 2000).

¹³ State v. Musser, 194 Ariz. 31, 977 P.2d 131 (1999).

¹⁴ Id., 194 Ariz. at 32, 977 P.2d at 132.

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do that as a traffic investigation was ongoing and the officer had a right to ensure his own safety as well as that of the fellow officers. The Defendant's refusal to obey that particular order was a violation of Scottsdale Revised Code Section 19-13.¹⁵

Appellant's refusal to obey the police officer falls squarely in the conduct prescribed by the Scottsdale City Code in Section 19-13. Appellant, therefore, lacks standing to challenge that ordinance as overbroad because it is not overbroad as applied to the Appellant and no First Amendment Rights of other persons not before this Court are affected by the application of the Scottsdale City Ordinance to Appellant. For this reason, this Court rejects Appellant's contentions that the ordinance is overbroad.

4. Conclusion

For all of reasons explained in this Court's opinion, this Court finds Scottsdale City Code Section 19-13 to be constitutionally sound as passed by the Scottsdale City Counsel and is applied by the Scottsdale City Court to Appellant in this case.

IT IS THEREFORE ORDERED affirming the judgment of guilt and sentence imposed.

IT IS FURTHER ORDERED remanding this case back to the Scottsdale City Court for all further and future proceedings in this case.

¹⁵ Order of September 18, 2000, at page 6.
Docket Code 512